

THE STATE BAR OF CALIFORNIA

HOW DO I USE THE SMALL CLAIMS COURT?

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How do I use the small claims court?

- 1 *What kinds of disputes can I take to small claims court?*
- 2 *Can I file a claim for any amount of money?*
- 3 *What can I do if I am owed more than the small claims limit?*
- 4 *Should we settle out of court?*
- 5 *How does the small claims court work?*
- 6 *How do I file my claim?*
- 7 *What if I have a claim against the person who is suing me?*
- 8 *What should I do before going to court?*
- 9 *What should I bring to court?*
- 10 *What happens if I do not show up for the hearing?*
- 11 *If I lose, can I appeal the decision?*
- 12 *What if the judge or commissioner decides against me, but I have a problem paying?*
- 13 *How do I collect my money?*
- 14 *Where can I find a lawyer to assist me?*

1 *What kinds of disputes can I take to small claims court?*

You can use the small claims court if you have a dispute with a person, company or government agency involving money (see #2). For example, you might want to “file a claim” in small claims court if:

- Someone dents your fender and refuses to pay for repairs.
- Your new sofa comes apart at the seams, and the store will not fix it or give back your money.
- The dry cleaner ruins your favorite shirt and will not pay you anything.
- The landlord will not return your security deposit, even though you left the apartment in good condition.
- You loaned money to someone who will not pay it back.

2 *Can I file a claim for any amount of money?*

No. You, as an individual, cannot seek more than \$7,500. And if you are filing a claim on behalf of a corporation, government agency or other entity, the maximum is generally \$5,000. The limit is even lower if you are suing a *guarantor*—a person who has guaranteed payment of someone else’s debt to you.

3 *What can I do if I am owed more than the small claims limit?*

You may want to hire a lawyer and sue in a higher court. Or you might consider cutting your claim to fit the limit.

For example, if a person owes you \$7,900, you could give up \$400 to bring your claim down to the \$7,500 limit. You cannot, however, sue the person twice – once for \$7,500 and later for \$400.

Also, there is no limit to the number of claims you can file in a calendar year. But keep in mind that only two of them can seek more than \$2,500.

When you take a dispute to small claims court, you may be entitled to receive “costs” from the other person. These are such charges as filing fees, the costs of notifying the person you are suing, and witness fees. Ask the court to add these costs to the “judgment,” which is the amount of money that the court says the other person owes you.

4 *Should we settle out of court?*

You must decide whether the small claims court is the best answer to your problem. You will have to spend some time getting ready for a court hearing. You also may have to take time off work to visit the small claims court clerk’s office and to attend the hearing.

Even if you win, the person you sued may not have the money to pay you. Then, you will need to spend more time and money trying to collect. If you do not have time to collect the money yourself, you may have to hire a collection agency. The agency may charge a fee of up to 50 percent of the money it collects.

Instead of going to court, you can consider:

- **Dealing directly with the other party.** Both of you may end up saving time and money if you

can agree on a way to settle the dispute. Let's say that you are the person being sued. If someone says you owe \$300, you might say, "I think you are wrong about that, but I would be willing to pay you \$150 so that we can both forget it." If you do this, be sure to have a written agreement and keep a signed copy in a safe place. Also, check with the clerk of the small claims court to be sure that the lawsuit is dismissed.

- **Arbitration.** If your dispute involves a written contract, check to see if the contract includes the right or requirement to arbitrate in case of a disagreement. This means you may have to submit the contract dispute to an independent, impartial panel that will hear both sides and recommend a solution. If you file a suit in small claims court, your case may be dismissed and you would lose your filing fee.

- **Mediation.** This means that a *neutral third party*—a person who is not involved in the dispute—tries to help you and the other party come to an agreement. Mediation is voluntary, and mediators do not give their opinions. Instead, they help people exchange information and ideas, and talk about ways to settle their differences. Check with the small claims court clerk to see if there is a mediation center in your area.

5 *How does the small claims court work?*

In most instances, lawyers are not allowed in small claims court, so you must represent yourself. However, you can talk to a lawyer beforehand (see #14). This is true whether you are the *plaintiff*—the person who is suing—or the *defendant*—the person being sued.

Small claims court is informal. The object, as stated in the law, is to "dispense justice promptly, fairly, and inexpensively." No one is allowed to

make objections. And there are no juries.

Cases move quickly. Usually, a hearing is scheduled within 40 days. However, if one of the people involved lives outside of the county, it might take up to 70 days.

You do not have to be a United States citizen to use the small claims court. You do have to be at least 18 years old and mentally competent. If you are not, the court must appoint a *guardian ad litem*—a parent, relative or adult friend—to sue for you.

When you file your claim, the court clerk generally will set the hearing date. In larger communities, small claims court is held some evenings or on Saturday once a month.

Many counties have a small claims advisor who can answer your questions and explain the process. An advisor also may be able to help you find a mediation service (see #4). Usually the information on contacting the small claims advisor is included in instructions available from the court.

6 *How do I file my claim?*

Before you file a claim, you should demand payment from the other person. It is a good idea to make the demand in writing and keep a copy.

Most personal injury claims must be filed within two years. But claims dealing with property damage, written contracts and many other problems have longer time limits (also called *statutes of limitations*). Ask the small claims advisor for more information.

Here are three basic steps in filing a claim:

Step 1: Fill out and sign a *Claim of Plaintiff form*. You will need the following information:

- **The right place.** You need to file your claim in the proper courthouse. Depending on the reason you are suing, this can be where the dispute took place, where the person you are

suing lives, where the firm you are suing does business, where the contract you made was supposed to be fulfilled or where the accident that led to your dispute took place. Check with the small claims advisor, whom you can contact through your county small claims court, to be sure you file in the right place.

- **The defendant's proper name.** This is very important. If you do not correctly state the name of the person or company in your claim, the case may be dismissed. Then, you may have to start over. An incorrect name also may cause problems when you try to collect money from the defendant.

If you sue individuals, you will need each person's full name and address. For a business, you will need the names of the company and the owners. When a corporation is involved, be sure to get its full name and address. You also need the name and address of an officer or some other person who legally can be notified of a lawsuit. You can get this information about corporations that do business in California by visiting the Secretary of State's Web site at www.ss.ca.gov. (Click on *California Business Portal*, then *California Business Search*.) Or, you can request such information by writing to: Secretary of State, Certification and Records Unit, P.O. Box 944260, Sacramento, CA 94244-2600. There may be a small fee; call 916-657-5448 for more information.

If the case involves a car accident, it is very important to get the full names and addresses of the registered owner and the driver—if they are not the same person. You also can ask for the name of the car's legal owner.

- **The facts of the dispute.** You must know exactly how much money you are claiming, the reason why you are claiming the money, and the date and place that the dispute got started.

Step 2: Pay the filing fee. If you cannot afford this fee or any other costs involved, you may not

have to pay. Ask the clerk for a *fee waiver form*.

Step 3: Notify the defendant. You must arrange to have a copy of the Claim of Plaintiff *served* or delivered to each defendant you are suing. The law says that any person who is 18 or older and who is not involved in the case can deliver the notice.

There are four ways in which you can notify the defendant. You can arrange to have someone from the sheriff's, marshal's or constable's office serve the notice. Although it costs more, you can hire a *process server* to make the delivery. The court clerk can send the notice for you by certified mail for a small fee for each defendant. Or, a friend over the age of 18 can act as a process server for you.

If you win the case, you may be able to get back the cost of serving the Claim of Plaintiff.

If you use a process server or a friend, be sure the person completes and signs the form saying that the notice was delivered to the defendant. This notice is called *Proof of Service*. The person must return the form to the small claims clerk's office. He or she also must understand that the Claim of Plaintiff must be served personally on the person being sued; it cannot be left on a doorstep or stuffed in a mailbox.

Defendants must receive the Claim of Plaintiff at least 15 days before the hearing, if they live in the county where it will be held. If they live outside the county, they must receive it at least 20 days before the hearing. Otherwise, unless a defendant chooses to show up and say, "Let's go ahead anyway," the judge must delay the hearing for at least 15 days.

In some cases, you may be able to use *substituted service*. This means that someone other than the defendant can receive the notice that you are suing. See your small claims advisor to find out if you can, or should, use substituted service.

7 *What if I have a claim against the person who is suing me?*

First, you should demand that the person pay you the exact amount that you believe you are owed. If you do not receive the money, request a *Claim of Defendant* form from the small claims clerk and fill it out. This is a paper that says how much the other person (the plaintiff) owes you and why.

Do this well before the small claims hearing date because, in most cases, the person suing you must receive the form at least five days before the hearing. You must serve the Claim of Defendant in the same way that a Claim of Plaintiff is served (see #6).

8 *What should I do before going to court?*

Try not to be nervous. Keep in mind that the judge—or commissioner or mediator, in some cases—is experienced in settling disputes and will try to come to a fair decision.

If you think you will have trouble remembering all the facts or talking to the judge, write down a list of the important points so you won't forget anything. Or ask someone to write the list for you. Then rehearse what you want to say in front of a friend, family member or mirror. If necessary, you can read your remarks to the judge. But do not plan to make a long statement.

You also can ask the small claims court advisor to help you prepare for the hearing. And although you cannot take a lawyer to court with you, you have every right to talk with one before and after your hearing (see #14).

9 *What should I bring to court?*

Bring the original copies of all the papers that you need to prove your case. For example, bring any letter, contract, rental agreement, deed, canceled check, repair bill, IOU, written damage estimate, diagram, drawing or photograph that will help your case.

You also should bring two photocopies of every original. You may be asked to give one copy to the person you are suing and one to the court. Depending on the reason you are going to court, you might even bring the shirt that the dry cleaner ruined or the blender that does not work.

If you have any witnesses, you must bring them to court with you. The judge generally will not consider what a witness has to say unless the person says it in court. But if your witnesses cannot appear in court, bring signed statements or “declarations” just in case the judge allows them. If possible, have the statements notarized.

If a witness refuses to attend, the court can issue a *subpoena*—an official paper ordering the person to come to court. The small claims clerk can tell you how to do this. If you subpoena a witness, you must be prepared to pay the person a set fee each day, plus a certain amount per mile to and from the court. Ask the judge at the hearing to add these costs to the judgment (see #3).

Make a brief statement of the facts, covering the important points. Answer the judge’s questions carefully. Do not insult or argue with the other party, even if you get angry.

Sometimes the judge announces the decision at the end of the hearing. But often the case will be “taken under submission,” which gives the judge time to review the law carefully. In this case, you will receive the judge’s decision in writing about two weeks later.

10 *What happens if I do not show up for the hearing?*

If you are the defendant and cannot go to court at the time of the hearing, go see the small claims clerk as soon as possible. Ask if you can get the date changed. In making such a request, you will be required to pay a fee.

Otherwise, if you are properly notified about the hearing and do not show up, the judge is likely to order a *default judgment* against you. This means the court – after hearing evidence from the other side – has decided against you.

If you are the plaintiff and you do not show up, the judge may dismiss your case or decide in favor of the defendant.

In either case, to get a second chance to tell your side of the story, there must be a very good reason why you did not attend the hearing. If you think the judge will accept the reason, file a motion to “vacate the judgment.” You must do this within 30 days of the date that the clerk mailed you the notice of the court’s decision. In addition, you will be required to pay a fee. The clerk will give you the forms to fill out. If you do not file this motion, you will not be allowed to appeal the decision to a higher court either.

11 *If I lose, can I appeal the decision?*

Only defendants can *appeal* the decision of the small claims court. So, if you are the plaintiff, you cannot appeal – unless the defendant files a Claim of Defendant (see #7) against you, and you lose this case.

If you believe that the judge has made a “clerical error,” notify the small claims advisor. For example, the amounts due you may have been added incorrectly.

You must file an appeal with the small claims court clerk within 30 days after the notice of the decision is mailed. You also must pay certain fees. Then the superior court's appellate panel will hear your case. During the appeals process, both you and the plaintiff may have legal representation.

A word of caution: If you lose an appeal in a higher court, you may be ordered to pay the judgment plus interest, costs involved and the plaintiff's attorney's fee up to \$150. You may even have to pay up to \$1,000 in attorney fees if the judge decides your appeal had no real basis and was not brought in good faith.

12 *What if the judge or commissioner decides against me, but I have a problem paying?*

You can ask the judge if you can make installment payments. Otherwise, the sheriff can take your wages or other property in order to pay the money you owe. You cannot be sent to jail, though, for failing to pay a debt.

13 *How do I collect my money?*

The small claims court cannot collect your money for you, but the small claims advisor can tell you some ways to do this yourself.

For example, you may be able to have the defendant's wages *garnished*. This means that the person's employer gives you part of the defendant's wages each payday until the debt is paid. To collect your money this way, you must find out where the person works; be sure to get the name of the company and its full address, including the county. Then, ask the small claims court clerk for a *Writ of Execution* and fill it out.

When the court issues this writ, the sheriff or marshal will deliver it to the debtor's employer.

If you know where the defendant banks, the small claims clerk can issue a Writ of Execution that the sheriff or marshal takes to the bank. You need to know the name of the bank, the full branch address and the county.

A Writ of Execution also can be used to *attach* or take certain kinds of personal property, such as stocks, bonds and the contents of a safe deposit box. After this property is collected, it can be sold in order to pay the money that you are owed.

Not all personal property can be taken. The defendant can file a *Claim of Exemption* to protect the "necessities of life," such as a house, furniture, clothes and some wages.

The cost of a Writ of Execution—as well as the amount that the sheriff or marshal charges to deliver the writ—can be added to the amount that the defendant owes you. You also are entitled to interest during the time it takes to collect.

If you do not have the information you need to collect your money, you can make the defendant come to court and answer your questions about his or her wages, bank account, personal property, real estate and employer's location. Contact the small claims advisor for information about how to schedule this hearing.

Remember: The judgment is good for 10 years, and you can renew it if you haven't collected the amount you're owed. But, in many cases, the longer you wait, the harder it is to collect the money.

14 *Where can I find a lawyer to assist me?*

If you want to talk to a lawyer and do not know one, you could ask a friend, a co-worker, your employer or a businessperson to recommend one.

Or, call a State Bar-certified lawyer referral service. For an online list of certified lawyer referral services, visit the State Bar's Web site at **www.calbar.ca.gov/lrs**. For a recorded message with the phone numbers of certified services in your county, call 1-866-44-CA-LAW (1-866-442-2529). If you are out of state, you can call 415-538-2250 to hear the same message. Or check the Yellow Pages of your telephone directory for a listing under "Attorney Referral Service."

State Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet certain standards of experience and be State Bar members in good standing.

Lawyer referral service fees do vary. Don't forget to ask whether there is a fee for the referral or consultation. And if you decide to hire a lawyer for additional help, make sure you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill.

What if you do not have enough money to pay for legal advice? You may belong to a "legal insurance" plan that covers the kind of services you need. Or, if you have very little income, you may qualify for free or low-cost legal help. Check the white pages of your telephone directory for a legal services program in your county. (California's statewide legal services Web site — **www.LawHelpCalifornia.org** — can help you locate a local program and provide you with additional resources as well.) Or contact a State Bar-certified lawyer referral service to find out if it offers free legal advice for low-income people or if it can direct you to a no-cost legal services organization.

For more information, see the State Bar

pamphlet *How Can I Find and Hire the Right Lawyer?* To order a free copy of this pamphlet or for a list of other State Bar consumer pamphlets available free of charge, send an e-mail to **pamphlets@calbar.ca.gov**. For information on ordering the bar's consumer publications by mail, call 1-888-875-LAWS (5297). Or, visit the bar's Web site — **www.calbar.ca.gov** — where you'll find the bar's consumer education pamphlets and information on ordering them. The pamphlets can be ordered in bulk as well.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. If you have a specific legal problem, you may want to consult a lawyer.

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